

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRENT HARDING,

Plaintiff,

v.

GLADYS MENCINAS, et al.,

Defendants.

No. 2:21-cv-00922 KJM SCR P

ORDER

Plaintiff, a state prisoner, proceeds pro se and in forma pauperis with claims under 42 U.S.C. § 1983 for Eighth Amendment deliberate indifference to medical needs. Plaintiff's "motion for discovery assistance" is before the court. (ECF No. 45.) For the reasons set forth below, the motion is denied.

I. Background

In its discovery and scheduling order dated July 5, 2024, the court ordered discovery to close on November 8, 2024, and set a pretrial motion deadline of January 31, 2025. (ECF No. 35.) On December 26, 2024, Plaintiff filed a "motion for discovery assistance" requesting the court's assistance in obtaining copies of defendants' personnel files, specifically "the disciplinary portion of the files as well as any and all grievances filed against said defendants[.]" (ECF No. 45.) On January 16, 2024, defendant Mencinas filed an opposition to plaintiff's motion on grounds plaintiff never served either defendant with any discovery, served his motion after discovery was

1 closed, and failed to meet and confer as required by the Federal Rules of Civil Procedure. (ECF
2 No. 46 at 1-2; Declaration of Ashley Calvillo (“Calvillo Decl.”), ¶¶ 2-4, ECF No. 47.) Plaintiff
3 did not file a reply. Defendant Holt has not opposed plaintiff’s motion.

4 II. Discussion

5 Because plaintiff did not timely serve discovery requests for the items at issue, the relief
6 sought falls outside the proper scope of a motion to compel under Rule 37 of the Federal Rules of
7 Civil Procedure. As relevant here, Rule 37 allows a party seeking discovery to move for an order
8 compelling production or inspection if the opposing party has failed to produce documents or
9 failed to permit inspection as requested under Rule 34. Fed. R. Civ. P. 37(a)(3)(B)(iv). The court
10 instead construes plaintiff’s motion as encompassing a request that discovery be reopened for the
11 purpose of allowing plaintiff to serve discovery requests, to which defendants would then have to
12 reply.

13 Under Rule 16(b) of the Federal Rules of Civil Procedure, “good cause” is required for
14 modification of a court’s pretrial scheduling order. Fed. R. Civ. P. 16(b)(4). Rule 16(b)’s ‘good
15 cause’ standard primarily considers the diligence of the party seeking the amendment.” Johnson
16 v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). “If the party seeking the
17 modification ‘was not diligent, the inquiry should end’ and the motion to modify should not be
18 granted.” Zivokovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting
19 Johnson, 975 F.2d at, 609). In determining whether good cause exists to reopen discovery, courts
20 may consider a variety of factors, such as: (1) whether trial is imminent, (2) whether the request is
21 opposed, (3) whether the non-moving party would be prejudiced, (4) whether the moving party
22 was diligent in obtaining discovery within the guidelines established by the court, (5) the
23 foreseeability of the need for additional discovery in light of the time allowed for discovery by
24 the district court, and (6) the likelihood that the discovery will lead to relevant evidence. U.S. ex
25 rel. Schumer v. Hughes Aircraft Co., 63 F.3d 1512, 1526 (9th Cir. 1995), vacated on other
26 grounds, 520 U.S. 939 (1997).

27 The court does not find good cause to modify its scheduling and discovery order. Plaintiff
28 did not ask defendants to produce the requested documents within the timelines established by the

1 court. Further, the court questions whether plaintiff's request for defendants' personnel files is
2 relevant to plaintiff's Eighth Amendment deliberate indifference to medical needs claim or
3 proportional to the needs of his case. See Fed. R. Civ. P. 26(b)(1). Lastly, both defendant Holt
4 (ECF No. 50) and defendant Mencias (ECF No. 51) have filed motions for summary judgment
5 and would be prejudiced by reopening discovery at this stage.

6 **III. Federal Rule of Civil Procedure 56(d)**

7 If plaintiff cannot present facts essential to justify his oppositions to defendants'
8 respective motions for summary judgment, plaintiff can file a motion for additional time to
9 conduct discovery under Federal Rule of Civil Procedure 56(d). Plaintiff's motion under Rule
10 56(d) must include a signed declaration explaining why plaintiff did not obtain the evidence
11 earlier in the proceedings (i.e., "good cause") and how the evidence sought will support plaintiff's
12 oppositions to defendants' respective motions for summary judgment. Fed. R. Civ. P. 56(d);
13 Tatum v. City & Cnty. of San Francisco, 441 F.3d 1090, 1100 (9th Cir. 2006). Plaintiff must
14 explain what "*specific* evidence [he] hopes to discover and the relevance of that evidence" to his
15 Fourteenth Amendment medical indifference claim. See Stevens v. Corelogic, Inc., 899 F.3d
16 666, 678 (9th Cir. 2018) (emphasis in original).

17 **IV. Conclusion**

18 In accordance with the above, IT IS ORDERED as follows:

- 19 1. Plaintiff's motion for discovery assistance (ECF No. 45) is denied.

20 DATED: February 5, 2025

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24 SEAN C. RIORDAN
25 UNITED STATES MAGISTRATE JUDGE
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